without inquiry. She believed that he would propose nothing but what was just, and she had a right to exercise that confidence. She lived with him seventeen years, for aught that appears, as an affectionate and faithful helpmeet, and no doubt largely assisted in accumulating the fortune, at least of $15,000, of which he died in possession according to the evidence. We think there was error in the charge, and accordingly

Judgment reversed, and *venire facias de novo* awarded.

Supreme Court of Pennsylvania.

CHRISTIAN KOENIG *v.* ANNA R. SMITH.

A trust created before the Act of 1848 to protect a married woman's property from her husband, to determine in case she *survives* him, is determined by a divorce *a vinculo*.

THIS was a petition, filed by Anna R. Smith in the Orphans' Court of Berks county, to compel the plaintiff in error, who was her trustee under the will of her father, to file an account and pay over the funds in his hands.

By his will, made in 1845, the father of the appellee made provision for the conversion of all his personal estate into money, and for the disposition of all his realty, at certain stipulated prices. He then directed that the proceeds of all his real and personal estate should be equally divided among all his children, or their heirs, except that his daughter Nancy, the appellee, should receive $200 less than either of the others. But as she was then intermarried with Thomas Smith, in view of her coverture the testator added the following: "I authorize and empower Christian Koenig, of Bern township, as trustee over all the full share and legacy and property which I may give unto my daughter Nancy. And I do hereby give and bequeath into the hands of said trustee, for the use and benefit of my said daughter Nancy and her children, the house and lot situate opposite Darrah & Young's steam-mill, in Maiden Creek township, Berks county, which I bought at sheriff's sale, which property shall be put unto her for the same as it cost me, and the balance of her legacy shall be put on interest for my said daughter, and the interest is to be

paid to her every year during her life, and after her decease, the house and lot of ground, and the principal sum or balance of her legacy aforesaid, is to go to her children. But if my daughter Nancy should survive her husband Thomas Smith, in such case I order and direct her trustee to overturn and assign all and everything coming to her as legacy and bequest in this will mentioned, to her and her heirs and assigns for ever."

In 1856 Nancy Smith, the appellee, was divorced from her husband, the said Thomas Smith, *a vinculo matrimonii*, and the question was raised in this record, whether she is entitled to have her interest under her father's will transferred to her absolutely. The trustee, Christian Koenig, resisted such a transfer for the reason that Thomas Smith, though not now her husband, was still living.

The court below decreed an account and transfer as prayed in the petition, whereupon the trustee appealed to this court.

J. S. Livingood, for appellant.—The will makes the law of this case, and neither Anna Smith nor her husband could by any act of theirs alter that law. The will gave the share of Nancy to her children after her death, subject only to the contingency that she survived her husband, a contingency that has not happened. The divorce cannot affect the rights of the children. The appellee and her former husband may remarry, and then she would be in possession of the property in direct violation of the will.

The cases cited by the appellee's counsel are cases where the *cestui que trust* died, and the discoverture was therefore permanent.

B. Frank Boyer, for appellee.—The trust was created for a special purpose, and when this purpose is satisfied the trust ceases: *Steacy* v. *Rice*, 3 Casey 75. The purpose was to protect appellee's property from her husband, and on her becoming discovert by his death she was to have it absolutely. A divorce places the wife in the same situation as to her property as if the husband had died. There is no difference in principle whether the marriage is dissolved by death or by the sentence of the law; in either case she becomes a single woman: *Kintzinger's Estate*, 2 Ashmead 455; *Legg* v. *Legg*, 8 Mass. 99; *Fink* v. *Hake*, 6

Watts 131; *Flory* v. *Becker*, 2 Barr 470; *Miltimore* v. *Miltimore*, 4 Wright 156; *Anstey* v. *Manners*, Gow N. P. 10.

The opinion of the court was delivered by

STRONG, J.—[After stating the facts.] It cannot be doubted that the trust was created for a single purpose. That was, to protect the property given at first absolutely to Mrs. Smith, against her husband. When the will was made, the Act of 1848, known as the Married Woman's Law, had no existence. Had the trust not been created, as the law then stood, Thomas Smith would have been entitled to all the personal property and to the usufruct of the realty. The trust could have had no other object than to guard against this. It was not to support a remainder to the children of the testator's daughter, for he gave at first the absolute ownership to her, and then, after having organized the trust, directed that the property should be assigned to her in fee without regard to any remainder in her children, if she survived her husband. But if the sole purpose of the trust was to protect the wife's estate against her husband, it is manifest that purpose was fully accomplished when the coverture ceased. The divorce of the parties terminated all possibility of the husband's interference with the property bequeathed and devised to the wife, as completely as his death would have done. Then why should the trust be continued after its exigencies have been met? It matters not what may be the nominal duration of an estate given by will to a trustee. It continues in equity no longer than the thing sought to be secured by the trust demands. Even a devise to trustees and their heirs will be cut down to an estate for life, or even for years if such lesser estate be sufficient for the purpose of the trust. See Hill on Trustees 239, *et seq.*, where many cases are collected. There can be no doubt that a trust for the separate use of a married woman ceases on the death of her husband, or on her divorce from him, and this though vested in terms in the trustee in fee, and though he be required to collect and pay over the rents and interest, not because such a trust is not an active one, but because it is special, and either the death or divorce renders its continuance unnecessary. If then the trust in Christian Koenig was instituted, as we think the will clearly shows, solely to protect the appellee's property against her husband, it terminated when by the divorce it became useless

as a means of such protection. The appellee is therefore entitled to a transfer of the property to her.

The decree of the court below is affirmed.

Supreme Court of Indiana.

EDMUND T. BAINBRIDGE *v.* THOMAS SHERLOCK ET AL.[1]

The Ohio river being a great navigable highway between states, the public have all the rights that by law appertain to navigable streams, as against riparian owners.

But the public rights are upon the river—not upon the banks.

The title of the riparian owner extends to low-water mark.

The right to use the river as a highway does not imply the right to use the banks for the purposes of landing, to receive and discharge freight and passengers.

Except in cases of peril or emergency, the navigator has no legal right to land, without consent of the riparian owner, at places other than those that have in some way become public landing-places.

Riparian owners may extend wharves to, and into the navigable portion of, the river, provided they do not unnecessarily obstruct navigation.

Whoever would maintain a wharf for the accommodation of any particular class of vessels, should possess a sufficient water-front to contain that class of vessels, without obstructing access to the lands of contiguous proprietors.

A wharf-boat moored to the shore, is entitled to the same immunity from trespass, or obstruction by vessels navigating the river, as is the land itself to which the wharf-boat is moored.

The navigator landing at one wharf with permission of the wharfinger, is not justified by any public right in the river, in so landing and mooring his vessel, as that while landed its side and stern will be carried by the current against the wharf-boat of a contiguous wharfinger lower down the river, thereby obstructing access to the lower wharf.

APPEAL from the Jefferson Circuit Court.

Jere. Sullivan and *Hendricks*, *Hord & Hendricks*, for appellant.

C. E. Walker, for appellee.

GREGORY, C. J.—There are errors and cross-errors assigned, but all the questions involved turn upon the nature and extent of the rights of the riparian owner along the Ohio river.

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[1] We are indebted to the courtesy of Hendricks, Hord & Hendricks, Esqrs., counsel for appellants, for this case.—EDS. AM. LAW. REG.